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March 19, 2022

## **VIA ECF**

Honorable Valerie Caproni, U.S.D.J.  
United States District Court  
Southern District of New York  
40 Foley Square, Room 443  
New York, New York 10007

Re: *In re Navidea Biopharmaceuticals Litigation, Case No. 19-cv-01578-VEC*

Dear Judge Caproni:

I represent Defendant/Counterclaim Plaintiff/Third-Party Plaintiff Dr. Michael M. Goldberg, M.D. (“Dr. Goldberg”) in the above-referenced matter. I write regarding the filing of my Declaration in opposition to the motion (the “Motion”) to strike expert testimony of Dr. Goldberg’s expert witness, Terry L. Orr filed by Plaintiff/Counterclaim Defendant Navidea Biopharmaceuticals, Inc. (“Navidea”) and Third-Party Defendant Macrophage Therapeutics, Inc. (“Macrophage” and, together with Navidea, “Defendants”).

Dr. Goldberg’s opposition to the Motion was due on March 18, 2022, per the Court’s memo endorsed scheduling order entered on February 25, 2022. On the evening of March 18, 2022 I commenced filing of Dr. Goldberg’s opposition papers. In doing so I encountered a technical issue in that the Court’s ECF website would not accept certain PDF documents for filing. I was able to resolve the issue with respect to Dr. Goldberg’s Memorandum of Law and the Declaration of Terry L. Orr dated March 18, 2022, which were timely filed via ECF. However, with respect to my Declaration, I was unable to resolve the issue prior to the filing deadline. Accordingly, I served a copy of my Declaration with exhibits on counsel for Navidea via electronic mail at the filing deadline and continued my attempts to resolve the issue and file my Declaration through the Court’s ECF website.

My Declaration contained only one substantive paragraph and otherwise simply attached certain documents cited in Dr. Goldberg’s Memorandum of Law. The Exhibits comprised (i) the expert report of Mr. Orr (Exhibit A), (ii) the expert report of Defendants’ expert witness, William F. Murray (Exhibit B), (iii) the transcript of the deposition of Mr. Murray (Exhibit C), and a copy

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of the August 14, 2018 agreement between Dr. Goldberg, Navidea and Macrophage that forms the basis for this litigation (Exhibit D). Each of these documents have been in the possession of all parties for some time now. I was eventually able to file my declaration and Exhibits A, B, C and D by breaking up even small exhibits (in one case 20 pages) into separate parts of 10 pages or less. However, when it became apparent that the ECF system would not accept exhibits in excess of 10 pages, filing Mr. Murray's deposition transcript (Exhibit C), which comprised in excess of 200 pages would have been impractical and unduly burdensome on the Court and Defendants.

Therefore, this morning, I revised my Declaration to indicate that it was attaching only relevant pages of Mr. Murray's deposition, and refiled my revised Declaration along with all exhibits, including re relevant pages of Mr. Murray's deposition.

I respectfully request that the Court accept my revised Declaration, filed today, with exhibits, in lieu of the original Declaration served via electronic mail on March 18, 2022 and filed later that night with partial exhibit set, and deem the revised Declaration timely filed. Because the filing was due on a Friday night, because I served a full copy of my original Declaration with full exhibit set on counsel for Defendants at the filing deadline, because I made every possible effort to submit my original declaration with exhibits, because the documents comprising the exhibits have been in the possession of the parties for some time, and because I filed my revised Declaration with complete exhibit set at approximately 10:00 am today, March 19, 2022, I do not believe that this request will cause any prejudice to any party. I do, however, apologize to the Court and counsel for Defendants for any confusion or inconvenience caused by the filing issues encountered last night.

Thank for your attention to this matter.

Respectfully submitted,

/s/ Gregory Zimmer, Esq.

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